Filed 7/26/19 In re A.B. CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re A.B., a Person Coming Under the Juvenile Court Law.	
CONTRA COSTA COUNTY CHILDREN AND FAMILY SERVICES BUREAU, Plaintiff and Respondent, v. M.B., et al., Defendants and Appellants.	A155442, A155667 (Contra Costa County Super. Ct. No. J17-01180)

M.B. (Father) and A.I. (Mother) appeal from an order terminating their parental rights pursuant to Welfare and Institutions Code section 366.26.[1] They assert the juvenile court abused its discretion in denying their request that the minor, A.B., be removed from his current placement and instead placed in a guardianship with his paternal grandmother (Grandmother). Mother and Father also argue the court erroneously proceeded with the section 366.26 hearing (366.26 hearing) when they were not present and failed to comply with the notice requirements of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.; ICWA). We agree the Contra Costa County Children and Family Services Bureau (Bureau) failed to comply with ICWA's notice requirements, remand the matter

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

to allow the Bureau and court to remedy that violation, and otherwise conditionally affirm the order.

I. BACKGROUND

Mother gave birth to minor A.B. while she and Father were incarcerated. Mother and Father were arrested and incarcerated for conspiracy and attempted murder of Father's 11-month-old baby with another woman. The record indicates the other woman filed for, and received, an order for child support. Father informed Mother, and they decided to kill the baby to avoid the financial burden. Father provided Mother with a gun. After two prior failed attempts at killing the baby, Father arranged to meet the other woman and baby at a local restaurant. While the woman and baby were seated, Mother entered wearing a mask and gloves, ran up to them and attempted to shoot the baby. As Mother fled from the scene, she crashed her car and was picked up by Father. After their arrest, neither Mother nor Father expressed any remorse about their conduct. Due to the facts underlying the parents' incarceration, law enforcement prohibited Mother from holding A.B. after his birth.

The Bureau filed a section 300 petition, alleging A.B. was at risk of substantial harm due to Mother's attempt to murder A.B.'s half sibling and Father's conspiracy with Mother to murder A.B.'s half sibling.

Mother and Father requested the Bureau appoint Grandmother as A.B.'s caregiver. The social worker informed Mother that Grandmother would need to complete the relative assessment process before she could be considered for a placement. On November 10, 2017, a Bureau supervisor made telephone contact with Grandmother and authorized her to visit A.B. at the hospital. On November 13, the social worker spoke with Grandmother regarding emergency placement. Grandmother stated she had purchased all necessary supplies for A.B. because she thought the minor would be released to her from the hospital. The social worker informed Grandmother of the placement process and that Grandmother could pick up a placement packet to complete. Grandmother asked the social worker to mail her the packet and stated, " 'there is too much going on.' " The Bureau mailed the packet to Grandmother the following day.

The jurisdiction report recommended A.B. be placed in the Bureau's custody due to the parents' incarceration and the serious charges against them. The report further recommended A.B. not be placed with Grandmother because she had not completed the relative assessment process, and Father indicated he would live with Grandmother if he were released. Following the detention hearing, the court ordered the child detained, and made a temporary finding that no relative was available to care for the minor.

The disposition report recommended against reunification services due to the likelihood of a lengthy incarceration for both parents. The court adopted this recommendation and scheduled a hearing for ICWA compliance and concurrent placement, as well as the 366.26 hearing.

At the time of the initial 366.26 hearing in July 2018, Grandmother had submitted three separate resource family applications for placement of A.B., and had informed the Bureau she was willing to adopt him. She also was in the process of completing the requisite training. However, Grandmother's home had yet to be licensed because she had not submitted several documents, including (1) criminal clearances; (2) photocopies of her driver's license; (3) facility sketch; (4) health questionnaire; (5) proof of residence; (6) two forms of income verification; (7) TB questionnaire; (8) employment verification; and (9) certificate of completion for CPR and first aid training. The Bureau indicated once this paperwork was submitted and fingerprint clearances were completed, Grandmother must then be interviewed. Based on these outstanding items, the Bureau stated it was unknown whether Grandmother would be approved for placement. The Bureau also was in the process of transitioning A.B. to a concurrent home. However, the court continued the 366.26 hearing at the request of the parents and stated it would "consider the issue of placement at that time."

At the continued hearing in August, counsel for the parents asked for another continuance to September, which the court granted. However, the court proceeded to review the status of A.B.'s placement. The Bureau stated Grandmother had submitted certain paperwork and completed her live scan the prior day. However, the Bureau noted the live scan results would not be returned for one to two weeks, and Grandmother

needed to submit other items before a home visit could be scheduled. Since the last hearing, A.B. had been placed in a concurrent home, and counsel for the minor supported the placement. Based on this information, the court stated: "I would certainly not order placement [with Grandmother] because the process has not been completed and she has to complete that process. Furthermore, the child is now placed in a concurrent home. I would not disrupt that without much more information being provided . . . . I will revisit the issue when we come back [in September] to see where the process stands and if there's still a request for placement of the child at that time."

At the 366.26 hearing in September, the parents again requested a continuance, which the court denied. The court terminated parental rights for both Mother and Father, concluding that no statutory exceptions apply. In addressing placement of A.B., the Bureau confirmed Grandmother's application was still pending and not yet completed. Counsel for the minor also argued against placement with Grandmother based on "some of the behaviors in the courtroom that [counsel] witnessed personally. The grandmother trying [to] speak with the parents, yelling hello to them. It seems there's a lack of understanding that she has about the serious nature of the allegations against the parents." The court concluded the issue of placement was not ripe because Grandmother's application had not been completed. The court explained each side would have a chance to argue the issue of placement once the Bureau completes the process and either approves or denies the application. Mother and Father timely filed notices of appeal.

II. DISCUSSION

A. *Juvenile Court's Denial of Request to Place Minor with Paternal Grandmother*

Mother and Father contend the juvenile court abused its discretion in denying their request to have A.B. placed with Grandmother. Mother argues insufficient evidence supported the order denying placement with Grandmother because the Bureau had not completed its assessment pursuant to section 361.3, subdivision (a). Mother contends if the Bureau had completed its investigation of Grandmother as a potential relative

placement, it is likely A.B. would have been placed with her in a guardianship and Mother's parental rights would not have been terminated.[2]

1. Standing to Contest Placement

As an initial matter, the parties dispute whether Mother and Father have standing to raise relative placement issues under section 361.3 as a basis to reverse the order terminating their parental rights.

In *K.C.*, *supra*, 52 Cal.4th 231, the juvenile court denied the paternal grandparents' request the child be placed with them, terminated the father's parental rights, and ordered adoption as the child's permanent plan. (*Id*. at p. 235.) The father appealed the order denying placement with the grandparents. The Supreme Court affirmed the Court of Appeal's order dismissing the appeal, finding the father lacked standing because he was not personally aggrieved by the dependency court's order. The Supreme Court explained that until parental rights are terminated, all parents have a compelling interest in the companionship, care, custody, and management of their children. Thus, when dependency proceedings begin, the law's first priority is "to preserve family relationships, if possible." (*Id.* at p. 236.) However, "after reunification services are terminated or bypassed . . . , 'the parents' interest in the care, custody and companionship of the child [is] no longer paramount. . . . [and] "the focus shifts to the needs of the child for permanency and stability . . . ." ' " (*Ibid*.) Because the father in *K.C.* did not argue any exception to terminating parental rights existed, it logically followed "[t]hat he ha[d] no remaining, legally cognizable interest in [the child's] affairs, including his placement . . . ." (*Id*. at p. 237.) The Supreme Court held, "A parent's appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent

[2] While Father also contests the juvenile court's denial of placement with Grandmother, he merely argues he "is aggrieved because A.B. was not placed with his mother and he complained of that fact often in the proceedings." He does not argue any exception to the termination of parental rights applies. Accordingly, Father lacks standing under *In re K.C.* (2011) 52 Cal.4th 231, 237–238 (*K.C.*), discussed in the subsequent section.

child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights." (*Id.* at p. 238.)

There are, however, several statutory exceptions to this general rule concerning termination of parental rights. The statutory exceptions to adoption "permit the juvenile court not to terminate parental rights when compelling reasons show termination would be detrimental to the child." (*K.C.*, *supra*, 52 Cal.4th at p. 237; § 366.26, subd. (c)(1).) One such exception is the relative caretaker exception to adoption in section 366.26, subdivision (c)(1)(A), which applies when "[t]he child is *living with a relative* who is *unable or unwilling to adopt the child* . . . , but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child." (§ 366.26, subd. (c)(1)(A), italics added.)

Here, Mother argues if A.B. had been placed with Grandmother as a relative caretaker, then the juvenile court might not have terminated her parental rights. She states Grandmother's ability to adopt A.B. had never been determined because the Bureau never completed its investigation of Grandmother as a potential placement. Accordingly, Mother concludes, Grandmother's care of A.B. would have supported application of the relative caretaker exception to the termination of her parental rights. Apart from its highly speculative nature, Mother's theory of how the case might have proceeded has no foundation in the record. Grandmother stated she was willing to adopt A.B. Thus, even if A.B. had been placed with Grandmother, the dependency court would have found the minor adoptable, and Mother's parental rights would have been terminated. (Accord, *In re A.K.* (2017) 12 Cal.App.5th 492, 500 ["Even if the juvenile court had decided placement of the minor with the paternal grandmother was appropriate, it would have then immediately proceeded to the permanency determinations of the section 366.26 hearing. That placement would not have advanced father's argument that the relative caretaker exception under section 366.26, subdivision (c)(1)(A) applied because (1) there was no indication the paternal grandmother was unwilling to adopt the minor, and (2) the minor would not have been living with her paternal grandmother for

any length of time so she would not have developed a relationship with the paternal grandmother that would have made removal detrimental to the minor's emotional well-being."].) Mother's groundless speculation that Grandmother may have been approved for guardianship but not for adoption is insufficient to support standing. Purely speculative injury does not confer standing. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1000; *Schwartz v. Provident Life & Accident Ins. Co*. (2013) 216 Cal.App.4th 607, 613.)

Mother has not established that her request for placement with Grandmother affords her standing to appeal the termination of her parental rights. And as explained below, even assuming for purposes of analysis that Mother (and Father) had standing to raise the issue, we find no abuse of discretion in the denial of the placement request.

2. Requested Placement with Grandmother

Mother and Father contend the court erred by denying their request to place A.B. with Grandmother based on the Bureau's failure to adequately assess Grandmother pursuant to section 361.3. While the juvenile court technically "denied" the request for placement with Grandmother, it did so without prejudice. The court noted the issue was not ripe for adjudication because the Bureau had not completed evaluating Grandmother's application.

"[W]hen a court has made a custody determination in a dependency proceeding, ' "a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." ' [Citations] . . . 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason.' " (*In re Stephanie M*. (1994) 7 Cal.4th 295, 318–319.)

As an initial matter, we note the court did not issue any substantive orders regarding A.B.'s placement following the 366.26 hearing. While the court issued its order on Judicial Council form JV-320 ("Orders Under Welfare and Institutions Code Sections 366.24, 366.26, 727.3, 727.31"), which includes a section for identifying the minor's permanent plan, that section was left unchecked. Likewise, the transcript of the

hearing indicates the court left the matter open for future resolution. Apart from denying the request without prejudice, the court noted Grandmother's application process has "just not been completed. [¶] . . . [¶] Because [minor's counsel] do[es] object to placement however, let's say the [Bureau] approves placement and they want to move the child, I will order that there be no disruption without a hearing first before the Court. If that approval comes through, then [G]randmother has a right to an immediate hearing, and I will allow minor's counsel to be heard further as well as [G]randmother. If the application process is actually denied, because it has not been denied yet, then I would allow [G]randmother the right to have a hearing on that issue." In the absence of a placement order, the issue is not ripe for our review. (See *Pacific Legal Foundation v. California Coastal Com*. (1982) 33 Cal.3d 158, 171.)

Nor did the court abuse its discretion in not substantively ruling on the parents' request to place A.B. with Grandmother. At the time of the 366.26 hearing, Grandmother had not completed the statutory approval process and received " 'resource family approval.' "[3] (§ 16519.5, subd. (c)(4)(A), (5).) As of July 2018, the record indicates Grandmother had yet to submit various documents to the Bureau, including criminal clearances, photocopies of her driver's license, facility sketch, heath questionnaire, proof of residence, two forms of income verification, TB questionnaire, employment verification, certificate of completion for CPR and first aid training, and verification of attendance of "RFA Pre-Service Training." The Bureau indicated these materials were needed before it could conduct a home inspection. While a home inspection was ultimately conducted just prior to the September 2018 hearing, Grandmother had not yet

[3] The resource family approval process is the current process for "approving relatives and nonrelative extended family members as foster care providers, and approving guardians and adoptive families." (§ 16519.5, subd. (a).) A resource family is "an individual or family that has successfully met both the home environment assessment standards and the permanency assessment criteria" established by statute and the State Department of Social Services. (*Id*., subds. (c), (d).) Only once an applicant has met the designated criteria do they receive " 'resource family approval' " and are "considered eligible to provide foster care for children in out-of-home placement and shall be considered approved for adoption and guardianship." (*Id*., subd. (c)(4)(A), (5).)

been approved as of the date of the hearing because the inspection identified the need for a baby bed and emergency numbers posted on the refrigerator.

Mother argues the Bureau failed to timely assess Grandmother, and both parents contend there was no basis to deny placement with Grandmother. While there does appear to be a lengthy delay in completing the resource family approval process, we cannot conclude such delay was the fault of the Bureau or that it justifies reversal of the juvenile court's order. Mother fails to offer any evidence to suggest the placement process was improperly delayed due to the Bureau's conduct. To the contrary, the record indicates some delay occurred due to Father's initial designation as an alleged parent and Grandmother's failure to submit certain paperwork, which the Bureau needed prior to scheduling a home visit.[4] Accordingly, we find no basis to conclude the Bureau improperly delayed Grandmother's approval process or that such delay erroneously led the juvenile court to deny the parents' placement request without prejudice.

B. *Presence of Parents at the 366.26 Hearing*

1. Relevant Factual Background

Prior to the initial 366.26 hearing in July 2018, the court issued a removal order instructing the Santa Rita Jail to allow the parents to be transported from the jail to the court so they could attend the hearing. Mother and Father were present for the July hearing. However, both parents requested a continuance rather than proceed with the 366.26 hearing at that time.

Transporting the parents to prior hearings had been an ongoing challenge. Alameda County had refused to comply with prior removal orders and transport the parents because of pending criminal charges against them. The juvenile court thus gave an explicit warning to the parties about the risk of continuing the hearing: "My concern here, folks, is getting the parents back before this Court; by continuing it, you may run into an issue we are not able to make arrangements for your clients to physically be

[4] At the time of A.B.'s initial detention and placement, Father was only an alleged parent. Because both parents were incarcerated, the process to raise Father's status to biological parent was not completed until March 2018.

present for purposes of that hearing." Both parties acknowledged the risk but still requested a continuance, which the court granted.

At the continued hearing in August, the parents were not transported despite the court issuing a removal order. Counsel for the parents expressed surprise their clients were not present and requested a continuance to arrange for telephonic appearances. The court again continued the 366.26 hearing.

At the September hearing, the parents again were not transported despite the court issuing another removal order. The court informed counsel that Alameda County refused to release either parent because of the pending charges, and "Alameda County was very angry" the parents had mistakenly been transported in July. Both counsel for the parents indicated they faxed letters to Santa Rita Jail requesting their clients be allowed to participate telephonically at the hearing. Mother's counsel provided the court with a telephone number for the jail. However, the court was placed on hold and unable to speak with anyone when it attempted to call the jail. In light of these challenges in obtaining Mother's and Father's appearances, either in person or telephonically, the court decided to proceed with the hearing.

2. Analysis

Penal Code section 2625, subdivision (d), provides in relevant part: "Upon receipt by the court of a statement from the prisoner or his or her attorney indicating the prisoner's desire to be present during the court's proceedings, the court shall issue an order for the temporary removal of the prisoner from the institution, and for the prisoner's production before the court. No proceeding may be held under . . . Section 366.26 of the Welfare and Institutions Code . . . without the physical presence of the prisoner or the prisoner's attorney, unless the court has before it a knowing waiver of the right of physical presence signed by the prisoner or an affidavit signed by the warden, superintendent, or other person in charge of the institution, or his or her designated representative stating that the prisoner has, by express statement or action, indicated an intent not to appear at the proceeding." Father and Mother contend their statutory and

due process rights were violated when the court held the section 366.26 hearing in their absence.

We agree Mother's and Father's absence, and the lack of an appropriate waiver, runs afoul of Penal Code section 2625, subdivision (d).[5] The Supreme Court has ruled that attendance by a prisoner's attorney is not sufficient for purposes of Penal Code section 2625, subdivision (d), and a juvenile court errs if it proceeds with a dispositional hearing or a section 366.26 hearing without the prisoner's presence or a waiver of his or her right to be present. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 623–624 (*Jesusa V.*).) However, the Supreme Court also held this error is not one of constitutional dimension. (*Id*. at pp. 601–602, 626.) "Although there is no dispute that prisoners have a constitutional right of access to the courts [citation] and that 'absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard' [citation], it does not follow that prisoners have a constitutional right to be *personally present* at every type of hearing." (*Id*. at p. 601.)

Mother argues the error is "structural" because "[t]he termination of parental rights is distinguishable from other types of dependency proceedings." Nonetheless, she fails to cite any authority holding that 366.26 hearings are distinguishable from other dependency hearings. Mother also does not cite any authority holding that incarcerated parents have a due process right to be present at dependency proceedings involving their children. In fact, our Supreme Court has expressly concluded they have no such right. (See *Jesusa V.*, *supra*, 32 Cal.4th at pp. 602, 625–626.) Thus, Mother's due process claim has no merit.

We apply a harmless error analysis "when a prisoner is involuntarily absent from a dependency proceeding." (*Jesusa V.*, *supra*, 32 Cal.4th at p. 625.) "Before any judgment can be reversed for ordinary error, it must appear that the error complained of 'has

[5] Because the Bureau does not argue the parents' acknowledgement at the July 2018 hearing that they may not be transported for future hearings constitutes a waiver, we do not consider that issue for purposes of this opinion.

resulted in a miscarriage of justice.' [Citation.] Reversal is justified 'only when the court, "after an examination of the entire cause, including the evidence," is of the "opinion" that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' " (*In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1098–1099.)

Here, Father and Mother were represented by their respective attorneys at the 366.26 hearing. Their attorneys had the opportunity to call witnesses and to present Mother's and Father's positions. And, in fact, when the court asked what testimony would have been presented by the parties, counsel conveyed Mother's and Father's positions. Father contends if he were at the hearing, A.B. likely would have been put in an adoptive placement with Grandmother. But he does not explain *how* his presence would have altered the outcome. As discussed above, Grandmother had yet to complete the resource family approval process. Thus, it was statutorily impossible for the court to order A.B. into an adoptive placement with Grandmother at the hearing.

Mother restates the arguments made by her counsel at the hearing, namely that two exceptions to the termination of her parental rights should apply: the sibling relationship exception (§ 366.26, subd. (c)(1)(B)(v)) and the relative caretaker exception (*id.*, subd. (c)(1)(A)). Mother contends her absence "deprived her of the right to develop a full record on these issues." However, Mother fails to identify what evidence she would have offered on these issues and how that evidence would have altered the outcome. The court expressly considered these exceptions. It noted A.B. "was removed at birth and has not been placed with any sibling and therefore there has not been a sibling relationship even established, other than the fact that there is common DNA and they're related by blood. And that is not sufficient for that exception to apply." To the extent Mother contends otherwise, she would have no insight into any relationship between A.B. and his siblings because she has been incarcerated the entirety of A.B.'s life. Others, such as the paternal aunt and Grandmother, would be in the position to testify as to such a relationship and, despite being present at the hearing, they did not do so. Likewise, it is unclear what testimony Mother could provide regarding whether Grandmother is unable

or unwilling to adopt A.B.—a necessary showing for the relative placement exception. Grandmother, who could best speak to the issue, opted not to do so. And, in fact, Grandmother previously indicated she *is* willing to adopt A.B. On this record, a different result was not reasonably likely absent the error under Penal Code section 2625.

C. *ICWA*

ICWA provides that "[i]n any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the . . . termination of parental rights to . . . an Indian child shall notify . . . the Indian child's tribe . . . of the pending proceedings and of their right of intervention." (25 U.S.C. § 1912(a).) "This notice requirement, which is also codified in California law [citation], enables a tribe to determine whether the child is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the proceeding." (*In re Isaiah W.* (2016) 1 Cal.5th 1, 5.) This notice requirement is a key component of ICWA because " '[t]he tribe's right to assert jurisdiction over the proceeding or to intervene in it is meaningless if the tribe has no notice that the action is pending.' " (*In re D.C.* (2015) 243 Cal.App.4th 41, 60.)

"[V]igilance in ensuring strict compliance with federal ICWA notice requirements is necessary because a violation renders the dependency proceedings, including an adoption following termination of parental rights, vulnerable to collateral attack if the dependent child is, in fact, an Indian child." (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 653.) " ' "To maintain stability in placements of children in juvenile proceedings, it is preferable to err on the side of giving notice and examining thoroughly whether the juvenile is an Indian child.' " (*In re Isaiah W., supra*, 1 Cal.5th at p. 15.) As a result, failure to comply with federal requirements is ordinarily prejudicial error. (*Breanna S.*, at p. 653.)

The Bureau does not rely on the assertion that notices were sent to the tribes and instead contends no notice was necessary because A.B. is not a child described by ICWA.[6] We disagree.

Here, Father informed the Bureau he believed he had Apache ancestry.[7] The record indicates an "Indian Child Inquiry Attachment" (Judicial Council form ICWA-010(A)) was completed and signed on November 14, 2017, although it does not appear to be part of the record. The Bureau did not have any further conversations with Father about his alleged Apache ancestry. Approximately seven months later, the Bureau spoke with the paternal aunt and Grandmother about Father's Indian ancestry. The paternal aunt had no information about whether they had any Indian ancestry. Grandmother denied having any such ancestry. She stated there was a rumor in the family that they may have Apache ancestry, but when the family investigated they discovered the rumor was not true. At the hearing on ICWA compliance, counsel for the Bureau and the adoption supervisor again spoke with the paternal aunt and Grandmother, and they again stated there was no Indian ancestry in the family. The court then asked whether anyone disputed a finding that A.B. is not an Indian child and the provisions of ICWA do not apply. At the time the court posed this question, Mother and Father, along with their respective counsel, were present. Counsel for Mother affirmatively responded "No,"

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[6] The disposition report asserts the Bureau mailed notifications to the appropriate tribes on March 7, 2018. The 366.26 hearing report likewise asserts notices were mailed to the Bureau of Indian Affairs, Secretary of the Interior, Apache Tribe of Oklahoma, Fort Sill of Apache Tribe of Oklahoma, Jicarilla Apache Nation, Mescalero Apache Tribe, San Carlos Apache Tribe, Tonto Apache Tribe of Arizona, White Mountain Apache Tribe, and Yavapai-Apache Nation on March 7, 2018. The 366.26 hearing report further notes the Bureau received responses from the Apache Tribe of Oklahoma, Fort Sill of Apache Tribe of Oklahoma, Mescalero Apache Tribe, San Carlos Apache Tribe, and Tonto Apache Tribe of Arizona, none of which found the minor eligible. However, the Bureau did not appear to have provided any of these records to the court, and none are part of the appellate record. In light of this lack of evidence and the Bureau's legal position on appeal, we limit our analysis to the question of whether notice was required.

[7] Mother informed the Bureau she did not have any Indian ancestry.

while counsel for Father made no verbal response. The juvenile court concluded ICWA did not apply and found "the child is not an Indian child."

We find the situation analogous to *In re Damian C.* (2009) 178 Cal.App.4th 192. In that case, the mother filed a form indicating that the child's grandfather was descended from the Pasqua Yaqui. (*Id*. at p. 195.) When interviewed, the grandfather reported that he had heard his own father was Yaqui or Navajo Indian but had been later informed that the family did not have Indian heritage. (*Id*. at p. 195.) His family tried to research their possible Indian heritage, but had been unsuccessful. (*Id*. at p. 199.) Despite the family being unable to confirm any Indian heritage, the court concluded this information was " 'reason to know that an Indian child is or may be involved' " and triggered ICWA notice requirements. (*Damian C.*, at p. 199; cf. *In re Jeremiah G*. (2009) 172 Cal.App.4th 1514, 1516 [father's "assertion that there was a 'possibility' the great-grandfather of the minor's father 'was Indian,' without more, was too vague and speculative to require ICWA notice to the Bureau of Indian Affairs"].)

While Father's statement of Apache ancestry is fairly vague, he identified a specific tribe through which such ancestry might flow, and Grandmother stated she had also heard about Apache ancestry although she was unable to confirm such heritage and now believed it to be false. The Bureau does not appear to have attempted to identify or speak with other family members. Nor does it appear to have spoken further with Father to try to identify the source of his belief or gather additional information about his claim.

"[T]he [dependency] court needs only a suggestion of Indian ancestry to trigger the notice requirement." (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 848.) That suggestion exists based on the current record.[8] Accordingly, we remand the matter for

[8] As discussed above, the California Supreme Court has instructed courts to " ' "err on the side of giving notice." ' " (*In re Isaiah W.*, *supra*, 1 Cal.5th at p. 15.) We thus conclude Father's lack of response to the court's question whether "anyone dispute[s] a finding that the child is not an Indian child" is insufficient to constitute a retraction of his prior claim of Apache ancestry. (Cf. *In re Jeremiah G.*, *supra*, 172 Cal.App.4th at p. 1521 [after initially telling the court he may have some Indian

the Bureau to either comply with ICWA's notice requirements or gather additional information indicating ICWA does not apply to A.B. We do not reverse the order terminating Mother's and Father's parental rights because there has not yet been a sufficient showing that ICWA substantive protections apply to A.B. If a tribe later determines that the child is an Indian child, "the tribe, a parent, or [the child] may petition the court to invalidate an action of placement in foster care or termination of parental rights 'upon a showing that such action violated any provision of sections [1911, 1912, and 1913].' (25 U.S.C. § 1914.)" (*In re Damian C., supra*, 178 Cal.App.4th at p. 200.)

III. DISPOSITION

The juvenile court's September 19, 2018 section 366.26 order is conditionally affirmed. The matter is remanded to the juvenile court for full compliance with the inquiry and notice provisions of ICWA.

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heritage, father told the Department of Health and Human Services and the court that he did not have any Indian heritage].)

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Margulies, Acting P. J.

We concur:

_____
Banke, J.

_____
Sanchez, J.

A155442, A155667
In re A.B.